GOVERNMENT OF INDIA
COMMERCE AND INDUSTRY
LOK SABHA

STARRED QUESTION NO:378
ANSWERED ON:12.12.2016
Trade Facilitation Agreement in Services
Antony Shri Anto

Will the Minister of COMMERCE AND INDUSTRY be pleased to state:

(a) whether the Government has recently submitted a concept note on a Trade Facilitation Agreement (TFA) in services at the World Trade Organisation (WTO);

(b) if so, the details thereof along with the salient features of the said TFA;

(c) whether the Government has received any reply from the WTO regarding TFA in services; and

(d) if so, the details thereof along with the response of the Government thereto?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF COMMERCE AND INDUSTRY (INDEPENDENT CHARGE)
(SMT. NIRMALA SITHARAMAN)

a) to d): A Statement is laid on the Table of the House.

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STATEMENT REFERRED TO IN REPLY TO PARTS (a) TO (d) OF LOK SABHA STARRED QUESTION NO. 378 FOR ANSWER ON 12th DECEMBER, 2016 REGARDING "TRADE FACILITATION AGREEMENT IN SERVICES"

(a) Yes, Madam.

(b) India tabled the "Concept Note for an initiative on Trade Facilitation in Services" dated 27 September 2016 at the WTO(copy enclosed as Annexure -I).The objective behind India's proposal for an Agreement on Trade Facilitation in Services (TFS) is to initiate discussions at the WTO on how to comprehensively address the numerous border and behind-the-border barriers, across all modes of supply, which are impediments to the realization of the full potential of services trade. Like the Trade Facilitation Agreement ("TFA"), adopted by WTO Members in 2014 to facilitate trade in goods, a well-structured TFS will significantly enhance the potential for trade in services for all WTO Members. India has proposed that the TFS Agreement could be based on the TFA in goods, with suitable modification and adaptation to the services context, as required.

(c) Yes, Madam.

(d) India's proposal was discussed at the WTO on 6th October 2016. Many WTO Members expressed interest in India's proposal as a positive move to revive Services negotiations at the WTO. Some of the key issues raised by members related to scope and coverage of India's proposal, mandate for a TFS and provisions related to Special and Differential Treatment. Some members sought greater detail about India's proposal.

The response of the Government was that India's proposal for an Agreement on TFS is to comprehensively address the numerous border and behind-the-border barriers impeding trade in services across all modes of supply. India has taken the position that the mandate for a TFS arises from the various provisions of the General Agreement on Trade in Services (GATS). India also intends to propose appropriate Special and Differential Treatment and provisions for technical assistance and capacity building for developing countries and Least Developed Countries (LDCs) in the proposed TFS Agreement.

Subsequently, India tabled a follow-up proposal dated 14th November 2016 on "Possible Elements of a Trade Facilitation in Services Agreement" (S/WPDR/W/57) at the WTO, which outlines the possible elements of the TFS Agreement, as conceived by India, in a more detailed manner (copy enclosed as Annexure- II).
Given the growing importance of Trade in Services globally, India is hopeful of constructive engagement with Members regarding the contours of the proposed TFS Agreement at the WTO.
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ANNEXURE-I

S/WPDR/W/55

27 September 2016

Working Party on Domestic Regulation Original: English

COMMUNICATION FROM INDIA
CONCEPT NOTE FOR AN INITIATIVE ON TRADE FACILITATION IN SERVICES
The following communication from the delegation of India, dated 23 September 2016, is being circulated to the Members of the Working Party on Domestic Regulation.

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1 BACKGROUND AND MOTIVATION
1.1. Services occupy a significant and growing share of domestic and international transactions. However, trade flows in services remain subject to numerous border and behind-the-border barriers as well as procedural bottlenecks, which are impediments to the realization of the full potential of services trade. These impediments particularly limit the benefits of trade in services especially for small and medium enterprises and small exporters worldwide.
1.2. The Trade Facilitation Agreement ("TFA"), adopted by WTO Members in 2014, was a significant milestone in relation to trade in goods. Its overall purpose is to expedite the movement, release and clearance of goods as well as co-operation on customs compliance issues. Like the TFA, there is need for a counterpart agreement in services, an Agreement on Trade Facilitation in Services ("TFS Agreement"), which can result in reduction of transaction costs associated with unnecessary regulatory and administrative burden on trade in services. The TFS Agreement will address the key issues that are pertinent to facilitating trade in services, such as transparency, streamlining procedures, and eliminating bottlenecks.
1.3. The scope of the proposed TFS Agreement would encompass measures by Members affecting trade in services across all modes of supply.
1.4. Importantly, the TFS Agreement, as in the case of the TFA, will also contain provisions for special and differential treatment for developing countries and LDCs and address related issues of technical assistance and support for capacity building.
2 ILLUSTRATIVE ELEMENTS OF A TFS AGREEMENT
2.1. The TFS Agreement could be based on the TFA in goods, with suitable modification and adaptation to the services context, as required.
2.2. Some of the issues would be cross-cutting issues relevant for all modes of supply of services, and others would be specific to each mode of supply.
2.3. An illustrative list of such elements is provided below:

2.1 CROSS-CUTTING ISSUES
â€¢ Publication and availability of information, including automation and international electronic exchange of trade data.
â€¢ Transparency in application of all measures of general application affecting trade in services.
â€¢ Ensuring administration of measures affecting trade in services in a reasonable, objective and impartial manner.
â€¢ Consultations and cooperation among relevant authorities.
â€¢ Opportunities to comment before entry into force of measures affecting trade in services.
â€¢ Procedures and timelines for consideration of applications from service suppliers, as well as for appeal and review.
â€¢ Disciplines on taxes, fees, charges and other levies on supply of services.
â€¢ Special and Differential Treatment for developing country Members and LDCs.
â€¢ Institutional arrangements.

2.2 MODE-SPECIFIC ISSUES
Mode 1:
â€¢ Facilitation of free flow of data across borders for ensuring meaningful supply of Mode 1 services.
Mode 2:
â€¢ Facilitation of supply of Mode 2 services, including through cross border insurance portability for availing of medical or tourist related services in a foreign country.
â€¢ Endeavour to streamline temporary entry formalities, such as visa processing fees, procedures and timelines for consumers seeking entry into another country to avail of services (such as medical services, education services, tourism, etc.).
Mode 3:
â€¢ Facilitation of supply of Mode 3 services, including through measures such as single window clearance for setting up commercial presence.
â€¢ Disciplines on charges applicable on Mode 3 service suppliers, in order to ensure that these do not unfairly disadvantage foreign service suppliers.
Mode 4:
â€¢ Facilitation of supply of Mode 4 services through simplification of procedures for temporary entry and stay, and clarity in respect of work permits and visas as relevant for the categories of the Mode 4 commitments.
â€¢ Disciplines on measures relating to taxation, fees/charges, discriminatory salary requirements, social security contributions in relation to temporary entry, etc. in order to ensure that these do not unfairly disadvantage foreign service suppliers.

3 CONCLUDING COMMENTS
India firmly believes that like the TFA, a well-structured TFS will significantly enhance the potential for trade in services for all Members. This concept requires careful deliberation in order to enable the development of a framework that can effectively address the main concerns of all Members. India looks forward to comments and suggestions from all Members on this critical concept and to developing the elements for the same.

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ANNEXURE-II

S/WPDR/W/57

14 November 2016
(16-0000) Page: 1/3

Working Party on Domestic Regulation Original: English

COMMUNICATION FROM INDIA
POSSIBLE ELEMENTS OF A TRADE FACILITATION IN SERVICES AGREEMENT
The following communication from the delegation of India, dated 14 November 2016, is being circulated to the Members of the Working Party on Domestic Regulation.

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1 INTRODUCTION
1.1. India tabled its proposal on the "Concept Note for an Initiative on Trade Facilitation in Services" (S/WPDR/W/55) at the WPDR meeting held on 6 October 2016, with the objective to briefly outline the concept of a TFS Agreement. As mentioned in that paper, while services occupy a significant and growing share of domestic and international transactions, trade flows in services still remain subject to numerous border and behind-the-border barriers as well as procedural bottlenecks. These impediments particularly limit the benefits of trade in services for small and medium enterprises as well as small exporters worldwide. The TFS Agreement will address the key issues that are pertinent to facilitating trade in services, such as transparency, streamlining procedures, and eliminating bottlenecks. In brief, the TFS Agreement is aimed at ensuring that the market access arising out of existing as well as future liberalization commitments are effective and meaningful.
1.2. We were very encouraged by the interest generated amongst the membership on the concept of a TFS Agreement. India would like to thank the Members for the engagement and interest shown in the proposal. Many Members also desired that India present a more detailed proposal which encapsulates India"s idea on furthering the initiative on trade facilitation in services.
1.3. India hereby presents this Elements Paper which outlines the possible elements of the TFS Agreement, as conceived by India, in a more detailed manner. We look forward to participating in constructive discussion and engagement with Members regarding the contours of the proposed TFS Agreement.
1.4. The issues which India proposes to cover in the TFS Agreement are inspired from the Trade Facilitation Agreement, the ongoing DR discussions (TN/S/36 dated 21 April 2011 and JOB/SERV/239/Rev.1 dated 31 October 2016), provisions of the GATS, several bilateral and regional FTAs as well as experience and feedback from service suppliers. As mentioned in the Concept Note by India (S/WPDR/W/55), some of the elements could be cross-cutting issues which are relevant for all modes of supply of services, and others could be specific to a mode of supply.
2 ELEMENTS OF THE TFS AGREEMENT: THE PROVISIONS OF THE TFS AGREEMENT COULD ENCOMPASS THE FOLLOWING ELEMENTS:
2.1. SCOPE AND DEFINITIONS: In our initial assessment, the focus of the TFS Agreement will be with regard to measures affecting trade in services in sectors where specific commitments are undertaken. However, some provisions, such as transparency, would apply to all measures affecting trade in services, following the approach in the GATS. The definitions will be largely based on the GATS. In addition, we would need to define certain terms that are not covered by the GATS.

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2.2 PUBLICATION AND AVAILABILITY OF INFORMATION: This provision can be based on GATS Article III on Transparency. It may encompass obligations such as publishing all measures of general application relating to supply of a service in an easily accessible manner and provide opportunity to comment before entry into force so as to enable governments, service suppliers and other interested parties to become acquainted with them. Another principle that may be considered is establishing and maintaining an appropriate mechanism for responding to enquiries regarding measures affecting trade in services.
2.3 ADMINISTRATION OF MEASURES: The provision could deal with obligations that lead to simple and transparent administration of measures affecting trade in services. This provision could comprise of aspects such as single window facility for applications, specific timeframes for applications, acceptance of electronic applications and authenticated copies of documents, procedure for appeal and review, including procedures for information and verification requests as well as an expedited fast-track procedure for acceptance of applications. We note that this provision could draw on the elements specified in the communication from Australia and others on "Domestic Regulation − Administration of Measures", dated 31 October 2016 (JOB/SERV/239/Rev.1). The elements of this provision would be particularly relevant for supply of services through all modes of supply, in particular Modes 3 and 4.
2.4 FEES AND CHARGES: Fees and charges relating to the supply of services sometimes themselves become barriers for the supply of a service. The TFS text could address this through provisions similar to the DR text, which seek to ensure that fees and charges applied are reasonable, transparent, commensurate with the costs incurred by the competent authorities, and do not in themselves restrict or impair the supply of the relevant service. The elements of this provision would be particularly relevant for supply of services through all modes of supply.
2.5 ADMINISTRATION OF ECONOMIC NEEDS TESTS: Members have a legitimate right to schedule economic needs tests (ENTs) in their commitments. However, lack of information on criteria for applicability of such ENTs, often becomes a barrier for supply of

services. It is extremely important to provide information with regard to the criteria on which ENTs are based, and details of requirements, procedures and guidelines for administration of such ENTs as per Members' Schedule of specific commitments in order to enable effective market access. This provision could accordingly include obligations that require Members to ensure that ENTs, where applied, do not impose undue costs on the service supplier, and do not result in undue delays and uncertainty for service suppliers. In this regard, Members may like to consider aspects that were highlighted in a recent communication by Turkey on "Economic Needs Test", dated 29 February 2016 (JOB/SERV/224). The elements of this provision would be particularly relevant for supply of services through Modes 3 and 4.

2.6 FACILITATING CROSS-BORDER FLOW OF INFORMATION: Cross-border flow of services under Mode 1 is in essence rooted in the cross-border flow of information that can be processed by service suppliers. This is particularly relevant in today"s internet driven and highly digitized world. The concept of free cross-border flow of information is, therefore, very important for ensuring meaningful supply of services through Mode 1. While a Member may adopt or maintain measures in accordance with its respective laws and regulations to protect such data / information, it should not impose barriers for flow of such information merely because the measures adopted by another Member for the protection of such information/data, are different from its own. The focus of this provision would be to address issues relating to this aspect.

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2.7 FACILITATING CONSUMPTION ABROAD: An important service relevant to consumption abroad is health services (also commonly referred to these days as "medical tourism"). Lack of insurance coverage for availing of medical services in a foreign country, however, acts as an impediment for the growth of services under this mode. Members could also consider a provision relating to the expedited processing of immigration formalities by the host territory in respect of foreign consumers who are seeking medical services or such other urgent services. Such a provision could be helpful for facilitating consumption abroad of health services.

2.8 PROVISIONS FACILITATING MOVEMENT OF NATURAL PERSONS: As has been explained in the Background Note by the Secretariat on Movement of Natural Persons dated 15 September 2009 (S/C/W/301), Mode 4 has not been able to contribute significantly to services trade owing to lack of a number of facilitative elements. In this regard, the TFS Agreement could address some of the critical bottlenecks impacting Mode 4 delivery of services. This provision could comprise of facilitative provisions pertaining to the meaningful supply of Mode 4 services as well as include an additional clarification and publication requirement that allows for providing and making publicly available, explanatory material on all relevant immigration formalities, in particular for the categories of natural persons specifically committed by Members. Other facilitative elements for temporary entry could include multiple entry permits for natural persons committed in a Member's schedule, and exemption of committed categories of natural persons from payment of additional costs and charges, including social security payments, etc. Members could also consider that where payments such as social security cannot be exempted, then can consideration be given for portability of such benefits? The provision may also address adequate opportunities and mechanisms especially for developing country Members to accede to recognition agreements pertaining to authorization, licensing and certification of service suppliers under Article VII.1.

2.9 COOPERATION AMONG COMPETENT AUTHORITIES: Cooperation among competent authorities of Members is very important for facilitating trade in services. The areas for cooperation under this provision could include exchange of information on procedural requirements and associated formalities and documentation. Other areas of cooperation could address the sharing of experiences regarding implementation, best practices for collection and compilation of data relating to trade in services, exchange of statistics on trade as well as technical guidance or assistance and support for capacity building to small and medium enterprises.

2.10 SPECIAL AND DIFFERENTIAL TREATMENT: This provision may comprise of special provisions for developing countries and LDCs pertaining to the entry into force of this Agreement due to their special economic and developmental situation as well as trade and financial needs. While LDCs shall not be required to implement any obligations, they would be encouraged to do so.

2.11 TECHNICAL ASSISTANCE: This provision could address technical assistance that may be provided to developing countries and LDCs in order to advance and strengthen their institutional and regulatory capacities. The provision could entail obligations that help build the supply capacity of developing countries and LDCs.

2.12 INSTITUTIONAL ARRANGEMENTS: The TFS Agreement could include institutional arrangements such as the establishment of a Committee on Trade Facilitation in Services at the WTO. Additionally, obligations under the provision could encompass the establishment of a National Committee on Trade Facilitation in Services in each Member State in order to facilitate implementation of the provisions of this Agreement.

3 CONCLUSION

3.1 India appreciates Members earlier engagement and discussion on the Concept Note and looks forward to views and suggestions on the Elements Paper.

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